THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.7264 OF 2006

Dated:13.04.2006

BETWEEN

Kancherla Aruna Kumari

….PETITIONER

AND

The Revenue Divisional Officer, Eluru, West Godavari District and another.

….RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.7264 OF 2006

ORDER:

The second respondent herein made an application to the first respondent on 07.10.2003 praying to cancel the pattadar pass books and title deeds issued to the petitioner in respect of land admeasuring Acs.1.53 cents in Survey No.235/2 situated at Prakasaropalem village of Nallajarla Mandal, West Godavari District. Taking application on his file, the first respondent issued a notice. The petitioner herein and her mother filed a detailed counter affidavit on 02.04.2006 opposing the application made by the second respondent. She alleges that her paternal grand father, late Satyanarayana Murthy, who got the property under a registered Will executed by Ramamma, gave the property to her at the time of her marriage, that she obtained pattadar pass books under the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity) and that she also raised a crop loan from State Bank of India, Nallajarla during 2003. She also alleges that the second respondent, who claims to be the adopted son of brother of Satyanarayana Murthy (paternal grand father of the petitioner) along with her mother filed O.S.No.458 of 2005 on the file of the Court of the Principal Junior Civil Judge, Tadepalligudem and that she also filed O.S.No.409 of 2005 on the file of the Principal Junior Civil Judge, Tadepalligudem for declaration of title. She also requested to desist from proceeding with the enquiry in view of the pendency of title suit, in vain. The matter before the first respondent stands posted on 17.04.2006.

In this writ petition, the petitioner in effect seeks a writ of Prohibition prohibiting the first respondent in proceeding with the enquiry into the application made by the second respondent on 07.10.2003 for cancellation of pattadar pass books issued to the petitioner.

Section 8(2) of the Act is to the effect that if any person is aggrieved as to any rights, or any entry made in the record of rights, he may institute a suit against any person denying or interested to deny his/her title to such right for declaration of his/her right. The petitioner having come to know that the second respondent is denying her right setting up a title to himself has already filed a suit being O.S.No.409 of 2005 and the same is pending. In such a situation, as contemplated under Rule 9(1)(iv)(c)(ii) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (hereinafter called, the

Rules), the recording authority or the appellate authority is precluded from proceeding from further enquiry. Now, that the petitioner has already raised such a ground in her counter affidavit before the first respondent. The first respondent should consider this aspect of the matter and if satisfied that the petitioner has filed the suit for better title, enquiry should be stopped till the matter is decided by the Court. This legal position is not denied or disputed by the learned counsel for the second respondent.

In view of the above, without expressing any opinion on the rival claims of the petitioner and the second respondent, the writ petition is disposed of directing the first respondent to consider the application of the second respondent in the light of the Rule referred to hereinabove.

The writ petition is accordingly disposed of. No costs.

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(V.V.S.RAO,J)

13.04.2006

Note: Issue CC in two days.

(By order)

VGB